



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/543,868	04/05/2000	David Hornstein	11642-005001	6375

26161 7590 01/28/2004

FISH & RICHARDSON PC
225 FRANKLIN ST
BOSTON, MA 02110

EXAMINER

CHARLES, DEBRA F

ART UNIT

PAPER NUMBER

3628

DATE MAILED: 01/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/543,868

Applicant(s)

HORNSTEIN, DAVID

Examiner

Debra F. Charles

Art Unit

3628

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 and 10-34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 10-34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 8 January 2004 has been entered.

Response to Arguments

2. As per claims 10, 13, and 15, in which the Attorney indicates Sammon, Jr., et al., does not have product attributes reflecting information elicited from the user.

However, the Examiner contends that in the Abstract, Sammon, Jr., et al. indicates creating a user profile from user input and then using that user profile to pull out and show the user items reflecting the preferences in the profile.

As per claims 1, 2-8, 12,16,17,19,20, and 24-26, in which the Attorney indicates Sammon, Jr., et al., and Nathan et al. fail to show selecting products based on aesthetic characteristics and one or more questions that request the user's preferences for one or more of the images presented and receiving from a user a set of responses from the questions to produce a profile of the user's preferences.

The Examiner contends that in the Abstract and in Fig. 10(body style), Sammon, Jr., et al. indicates creating a user profile from user input and then

using that user profile to pull out and show the user items reflecting the preferences in the profile and that body style is an aesthetic characteristic of a car. And Nahan discloses artwork, especially paintings, that are inherently filled with inherent aesthetic characteristics including texture and style. Thus, the artwork is a visual representation of various aesthetic characteristics. Showing the images via the web would be obvious because this method enables individuals to view images of products even if the products are not located nearby. Although Sammon, Jr. et al. is directed at buying cars, aesthetic characteristics come into the car-buying decision in the same way that aesthetic characteristics come into the artwork-buying decision. Thus, the use of aesthetic characteristics to define the buyer's preferences are parallel in these references in the same way as the applicant's invention illustrates.

As per claims 11 and 14, in which the Attorney indicates Sammon, Jr., et al., and Yourick do not disclose the aesthetic scales that include at least one of form, material, decoration, overall appearance, and novelty.

However, the Examiner contends that learning the buying habits of the customer is the reason behind assembling a profile of customer preferences and the combined references do show esthetic scales, see Figs. 10 and 12(body style and scales). The Yourick reference talks about the characteristics of the products that can easily be classified as aesthetic such as clean, trendy, etc. and these characteristics are at least one of the form, material, decoration, overall appearance, and novelty.

Re claims 18, and 21-23, in which the Attorney indicates Sammon, Jr., et al., Nahan and Yourick present the user with a scale in which to grade the strength of the user's preferences for one or more aesthetic characteristics expressed in one or more images presented to the user, the detailed actions for establishing an esthetic profile, sending the user a test set of images to determine if the user presented a consistent reply.

However, the Examiner contends that relevant to claims 18 and 21, in col. 1, lines 15-65, i.e. "group of items" is a set, and "certain types of persons" is the profile gleaned from user responses, and col. 2, lines 60-67, col. 4, lines 45-50, col. 10, lines 1-40 and Tables 9 and 10, thereof Yourick disclose attributes that identify the consumer's interest such as whether the item has a certain specific characteristic. The Yourick reference talks about the characteristics of the products that can easily be classified as aesthetic such as clean, trendy, etc. and these characteristics are at least one of the form, material, decoration, overall appearance, and novelty.

Relevant to claims 22 and 23 in col. 2, lines 5-15 and 45-50, col. 3, lines 1-10, and col. 4, lines 50-65, col. 9, lines 5-20, thereof Yourick disclose order of the presentation of images continuously evolves based upon experience and inductive learning and data recorded on an hourly basis, matching the customer preferences to a hypothetical shopper. Thus, it would have been within the level of ordinary skill in the art to modify the method of Sammon, Jr. et al. by adopting the teachings of Yourick. The motivation to combine these references is that the Yourick reference talks about comparing the user's preferences to the hypothetical shopper to determine how

Art Unit: 3628

consistent the customer's answers are to the images presented for opinion. When the answers consistently match the hypothetical shopper or deviate in a specific pattern, then you can tell if the user is giving consistent answers to the prompts presented on the computer screen.

Relevant to claims 27, 28, 29, 33 and 34, in which the attorney indicates the references do not suggest combining a first and different second profile to create a composite user profile. Combining data to create composite data is old and well-known in the computer arts and in Abstract, and Fig. 6b and 6c and col. 3, lines 15-25, thereof Tuzhilin indicates i.e. "static and dynamic profile are then combined to form the user profile" and the user profile here is clearly a composite profile.

Relevant to claims 30-32, the attorney indicates Tuzhilin, Nahan et al. and Lang et al. do not show profile tags of two users are combined by weighing how much each user will contribute to a factor in a combined profile. In col. 3, lines 15-40, Lang et al. disclose that weighted average techniques for filtering user information is old and well-known. The weighed average technique is mentioned in Lang et al. and it would be obvious to apply this technique to a value associated with an attribute tag or a profile tag to create a combined profile that has relevant characteristics of each individual profile. (Abstract, i.e. "static and dynamic profile are then combined to form the user profile" and the user profile here is clearly a composite profile, and Fig. 6b and 6c and col. 3, lines 15-25, col. 2, lines 20-60, col. 5, lines 45-65). Although Tuzhilin does not indicate his invention prompts the

Art Unit: 3628

user for feedback and the user's opinion on profiling combining, this is an inherent characteristic because Tuzhilin's invention would not work without user input.

Claim Rejections - 35 USC § 101

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 24 and 26-34 are rejected under 35 U.S.C. 101 because the bodies of the rejected claims do not recite technology, i.e. computer implementation or any other technology in a non-trivial manner. *In re Toma*, 197 USPQ 852 (CCPA 1978). *Ex parte Bowman* 61 USPQ2D 1669.

For a claim to be statutory under 35 USC 101 the following two conditions must be met:

1) The claimed invention must produce a "useful, concrete, tangible result" (*In re Alappat*, 31USPQ2d 1545, 1558 (Fed. Cir. 1994) and *State Street vs. Financial Signature Group Inc.*, 47 USPQ2d 1596' 1601-02 (Fed Cir. 1998));

AND

2) The claimed invention must utilize technology in a non-trivial manner (*Ex parte Bowman*, 61 USPQ2d 1665, 1671 (Bd. Pat. Pat. App. & Inter. 2001)).

As to the technology requirement, note MPEP Section IV 2(b). Also note *In re Waldbaum*, 173USPQ 430 (CCPA 1972) which teaches "useful arts" is synonymous with "technological arts". In *Musgrave*, 167USPQ 280 (CCPA 1970), *In re Johnston*, 183USPQ 172 (CCPA 1974), and *In re Toma*, 197USPQ 852 (CCPA 1978), all teach a technological requirement.

In *State Street*, "in the technological arts" was never an issue. The invention in the body of the claim must recite technology. If the invention in the body of the claim is not tied to technological art, environment, or machine, the claim is not statutory. *Ex parte Bowman* 61USPQ2d 1665,1671 (BD. Pat. App. & Inter.2001)(Unpublished).

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

Art Unit: 3628

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 10,13, and 15 are rejected under 35 U.S.C. 102(e) as being anticipated by Sammon, Jr. et al.(U.S. PAT. 6012051A).

Re claim 10: Sammon, Jr. et al. disclose a method executed on a computing device for producing an aesthetic profile tag for a user comprises: viewing an image that visually expresses one or more attribute scales; and entering, on a user input device associated with the computing device, preferences for the attribute scales (Abstract, col. 3, lines 50-60, col. 4, lines 55-67, col. 8, lines 15-col. 9, lines 1-40).

Re claim 13: Sammon, Jr. et al. disclose a computer program product for selecting products, said computer program product residing on a computer readable medium comprises instructions for causing a computer to: receive from a user responses for preferences for aesthetic characteristics embodied in one or more images, wherein the computer program product produces a graphical user interface that contains questions that elicit information from the user regarding the user's preferences for aesthetic characteristics related to at least one of form, texture, material, color, pattern, extent of decoration, and overall product appearance(Abstract, Fig. 2, item 101 and 102, col. 5, lines 1-15 and lines 45-55).

Re claim 15: Sammon, Jr. et al. disclose a system for selecting products, said system comprising: a computer; a computer program product residing on a computer

Art Unit: 3628

readable medium comprises instructions for causing a computer to: receive from a user responses for preferences for aesthetic characteristics embodied in images that correspond to aesthetic features of products, wherein the computer program product produces a graphical user interface that contains questions that illicit the information from the user (Abstract, Col. 3, lines 25-35, col. 4, lines 60-col. 5, line 35, col. 11, lines 60-67, Fig. 1, claim 22, 31, 32).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1, 2, 3, 4, 5, 6, 7, 8, 12, 16, 17, 19, 20, 24, 25 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sammon, Jr. et al. and Nahan et al. (U.S. PAT. 6343273B1).

Re claims 1 and 16: Sammon, Jr. et al. disclose a method for selecting products that occurs over a networked computer system comprises: sending a user a web page with one or more images (Abstract, claim 49) one or more questions that request the user's preferences for one or more of the images

Art Unit: 3628

presented(Abstract, i.e. prompt, col. 3, lines 20-25); and receiving from a user a set of responses from the questions to produce a profile of the user's preferences for aesthetic features of products(Col. 3, lines 25-35).

Sammon, Jr. et al. do not explicitly disclose(s) wherein at least one of the images emphasizes one or more aesthetic characteristics. However, in col. 3, lines 50-60, col. 4, lines 55-67, col. 8, lines 15-col. 9, lines 1-40 thereof, Nahan et al. disclose images of artwork that emphasizes aesthetic characteristics. Thus, it would have been within the level of ordinary skill in the art to modify the method of Sammon, Jr. et al. by adopting the teachings of Nahan et al. The motivation to combine these references is artwork, especially paintings, are filled with inherent aesthetic characteristics including texture and style. Thus, the artwork is a visual representation of various aesthetic characteristics. Showing the images via the web would be obvious because this method enables individuals to view images of products even if the products are not located nearby. Although Sammon, Jr. et al. is directed at buying cars, aesthetic characteristics come into the car-buying decision in the same way that aesthetic characteristics come into the artwork-buying decision. Thus, the use of aesthetic characteristics to define the buyer's preferences are parallel in these references in the same way as the applicant's invention illustrates.

Re claim 2: Sammon, Jr. et al. disclose compiling an aesthetic profile tag for the user based on the received responses(Abstract, col. 3, lines 20-30).

Re claim 3: Sammon, Jr. et al. do not explicitly disclose(s) retrieving a product aesthetic tag associated with a particular product type selected by the user, product aesthetic tag representing one or more aesthetic features of the product; forming a result tag that contains a value corresponding to how well aesthetic features of the product match to aesthetic preferences of the customer. However, in Abstract, col. 3, lines 50-60, col. 4, lines 55-67, col. 8, lines 15-col. 9, lines 1-40 thereof, Nahan et al. disclose retrieving artwork images based on customer preferences as established in the customer profiles to retrieve the image of things with characteristics the customer seeks. Thus, it would have been within the level of ordinary skill in the art to modify the method of Sammon, Jr. et al. by adopting the teachings of Nahan et al. The motivation to combine these references is the product aesthetic tag is the genre or style of the artwork and the Abstract in Nahan et al. says the preference data comprises a variable associated with particular attributes that the customer considers to be relevant. This is the product aesthetic tag that represents the features of the product.

Re claim 4: Sammon, Jr. et al. disclose the user is presented with a graphical user interface that contains questions that elicit the information from the user(Abstract, Fig. 2, item 101 and 102, col. 5, lines 1-15 and lines 45-55).

Re claim 5: Sammon, Jr. et al. disclose at least one of the questions presented to the user asks the user to grade the user's preferences for an image on scale(Fig. 4-14).

Re claim 6: Sammon, Jr. et al. disclose a control for the user to enter a value corresponding to how the user rates one or more of the images(Fig. 4-14, claim 34, i.e. "graphical tool").

Re claim 7: Sammon, Jr. et al. disclose rank ordering the result tags(col. 11, lines 15-20, i.e. "computes preference ranking" and col. 9, lines 60-67, col. 11, lines 15-25).

Re claim 8: Sammon, Jr. et al. disclose presenting the user with the products corresponding to the rank ordered result tags(col. 11, lines 15-20, i.e. "computes preference ranking").

Re claim 12: Sammon, Jr. et al. disclose each scale is further divided into three levels(col. 6, lines 25-30, i.e. a hierarchy has different levels).

Re claim 17: Sammon, Jr. et al. do not disclose each image in the set of images emphasize one or more aesthetic characteristics. However, in Abstract, col. 3, lines 50-60, col. 4, lines 55-67, col. 8, lines 15-col. 9, lines 1-40 thereof, Nahan et al. disclose stylistic characteristics based on genre and artwork styles unique to different artists. And the paintings or sculpture indicate the various characteristics with aesthetic descriptions. Thus, it would have been within the level of ordinary skill in the art to modify the method of Sammon, Jr. et al. by adopting the teachings of Nahan et al. The motivation to combine these references is that the Nahan et al. reference provides a complete listing of aesthetic characteristics used in the art world which when combined in various categories lead to a comprehensive description of the product including style and genre that are attributes of the product.

Re claim 19: Sammon, Jr. et al. disclose presenting a set of images to the user further comprises: presenting the user with a scale in which to grade the strength of the user's preferences for one or more images presented in the set of images (Abstract, Fig. 4-14).

Re claim 20: Sammon, Jr. et al. disclose the input from the user indicating the user's preferences for one or more aesthetic characteristics expressed in of one or more images in the set of images comprises the user's selection of an image from a set of images(Abstract, Fig. 4-14).

Re claim 24: Sammon, Jr. et al. disclose a method for determining product profile, the method comprising the steps of: viewing a product; grading one or more aesthetic characteristics of the product on a scale; and storing the grade in a field corresponding to the graded aesthetic characteristics within the product profile(Abstract, claims 27,28, i.e. determining weights on the product images effectively creates the product profile and claim 49) .

Re claim 25: Sammon, Jr. et al. disclose the step of viewing a product comprises: viewing one or more electronic images of the product(claims 22 and 49).

Re claim 26: Sammon, Jr. et al. disclose grading a plurality of characteristics of the product on a plurality of scales(Fig. 4-14); and storing the grades in a plurality of fields in a product profile(col. 2, lines 20-40).

Sammon, Jr. et al. do not explicitly disclose wherein each wherein each field in the product profile corresponds to an aesthetic characteristic or combination of aesthetic

Art Unit: 3628

characteristics. However, in Abstract, col. 3, lines 50-60, col. 4, lines 55-67, col. 8, lines 15-col. 9, lines 1-40 thereof, Nahan et al. disclose stylistic characteristics based on genre and artwork styles unique to different artists. And the paintings or sculpture indicate the various characteristics with aesthetic descriptions. Thus, it would have been within the level of ordinary skill in the art to modify the method of Sammon, Jr. et al. by adopting the teachings of Nahan et al. The motivation to combine these references is that the Nahan et al. reference provides a complete listing of aesthetic characteristics used in the art world which when combined in various categories lead to a comprehensive description of the product including style and genre that are attributes of the product.

8. Claims 11 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sammon, Jr. et al. and Yourick (U.S. PAT. 4775935A).

Re claims 11 and 14: Sammon, Jr. et al. do not explicitly disclose(s) wherein the aesthetic scales include at least one of form, material, decoration, overall appearance, and novelty. And compile an aesthetic profile tag for the user based on the received responses for the scales. However, in col. 1, lines 15-65, i.e. "group of items" is a set, and "certain types of persons" is the profile gleaned from user responses, and col. 2, lines 60-67, col. 4, lines 45-50, col. 10, lines 1-40 and Tables 9 and 10, thereof Yourick disclose attributes that identify the consumer's interest such as whether the item has a certain specific characteristic. Thus, it would have been within the level of ordinary skill in the art to modify the method of Sammon, Jr. et al. by adopting the teachings of Yourick. The motivation to combine these

Art Unit: 3628

references is that the Yourick reference talks about the characteristics of the products that can easily be classified as aesthetic such as clean, trendy, etc. and these characteristics are at least one of the form, material, decoration, overall appearance, and novelty.

9. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sammon, Jr. et al. and Nahan et al. as applied to claim 17 and in view of Yourick.

Re claim 18: Sammon, Jr. et al. do not explicitly disclose(s) wherein the aesthetic scales include at least one of form, material, decoration, overall appearance, and novelty. And compile an aesthetic profile tag for the user based on the received responses for the scales. However, in col. 1, lines 15-65, i.e. "group of items" is a set, and "certain types of persons" is the profile gleaned from user responses, and col. 2, lines 60-67, col. 4, lines 45-50, col. 10, lines 1-40 and Tables 9 and 10, thereof Yourick disclose attributes that identify the consumer's interest such as whether the item has a certain specific characteristic. Thus, it would have been within the level of ordinary skill in the art to modify the method of Sammon, Jr. et al. by adopting the teachings of Yourick. The motivation to combine these references is that the Yourick reference talks about the characteristics of the products that can easily be classified as aesthetic such as clean, trendy, etc. and these characteristics are at least one of the form, material, decoration, overall appearance, and novelty.

10. Claims 21,22, and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sammon, Jr. et al. and Nahan et al. as applied to claim 16 and in view of Yourick.

Re claim 21: Sammon, Jr. et al. disclose presenting a plurality of sets of images to a user, and for each set of images, presenting the user with a scale in which to grade the strength of the user's preferences for one or more aesthetic characteristics expressed in of one or more images presented in the set of images(Abstract, col. 1, lines 50-67,col. 2, lines 15-67); and receiving input from the user indicating the user's preferences for one or more aesthetic characteristics expressed in of one or more images in each set of images(Abstract, col. 2, lines 30-50, claim 22).

Sammon, Jr. et al. do not explicitly disclose wherein each set of images emphasizes one or more aesthetic characteristics. However, in col. 1, lines 15-65, i.e. "group of items" is a set, and "certain types of persons" is the profile gleaned from user responses, and col. 2, lines 60-67, col. 4, lines 45-50, col. 10, lines 1-40 and Tables 9 and 10, thereof Yourick disclose attributes that identify the consumer's interest such as whether the item has a certain specific characteristic. Thus, it would have been within the level of ordinary skill in the art to modify the method of Sammon, Jr. et al. by adopting the teachings of Yourick. The motivation to combine these references is that the Yourick reference talks about the characteristics of the products that can easily be classified as aesthetic such as clean, trendy, etc. and these characteristics are at least one of the form, material, decoration, overall appearance, and novelty.

Art Unit: 3628

Re claims 22 and 23: Sammon, Jr. et al. do not explicitly disclose examining the input received from the user; determining whether the user has given consistent responses to an aesthetic characteristic emphasized in one or more sets of images; and if a consistent response has been given, storing a profile tag indicating the user's preference for the aesthetic characteristic emphasized in one or more sets of images. And determining whether the user has given consistent responses to an aesthetic characteristic comprises: sending the user a test set of images that emphasizes a particular aesthetic characteristic; and comparing the input received from the user that corresponds to the test set of images to input received from the user that corresponds to one or more prior sets of images to determine if a consistent response has been given. However, in col. 2, lines 5-15 and 45-50, col. 3, lines 1-10, and col. 4, lines 50-65, col. 9, lines 5-20, thereof Yourick disclose order of the presentation of images continuously evolves based upon experience and inductive learning and data recorded on an hourly basis, matching the customer preferences to a hypothetical shopper. Thus, it would have been within the level of ordinary skill in the art to modify the method of Sammon, Jr. et al. by adopting the teachings of Yourick. The motivation to combine these references is that the Yourick reference talks about comparing the user's preferences to the hypothetical shopper to determine how consistent the customer's answers are to the images presented for opinion. When the answers consistently match the hypothetical shopper or deviate in a specific pattern, then you can tell if the user is giving consistent answers to the prompts presented on the computer screen.

Art Unit: 3628

11. Claims 27, 28, 29, 33 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tuzhilin (U.S. PAT. 6236978B1) and Nahan et al.

Re claim 27: Tuzhilin disclose retrieving a first user's profile, wherein the first user's profile comprises one or more tags which correspond to the first user's preferences; retrieving a second, different user's profile, wherein the second user's profile comprises one or more tags which correspond to the second user's preferences; and combining the first and second users' profile to create a composite user profile(Abstract, i.e. "static and dynamic profile are then combined to form the user profile" and the user profile here is clearly a composite profile, and Fig. 6b and 6c and col. 3, lines 15-25).

Tuzhilin does not explicitly disclose one or more aesthetic characteristics of products. However, in Abstract, col. 3, lines 50-60, col. 4, lines 55-67, col. 8, lines 15-col. 9, lines 1-40 thereof, Nahan et al. disclose stylistic characteristics based on genre and artwork styles unique to different artists. And the paintings or sculpture indicate the various characteristics with aesthetic descriptions. Thus, it would have been within the level of ordinary skill in the art to modify the method of Tuzhilin by adopting the teachings of Nahan et al. The motivation to combine these references is that the Nahan et al. reference provides a complete listing of aesthetic characteristics used in the art world which when combined in various categories lead to a comprehensive description of the product including style and genre that are attributes of the product.

Re claim 28: Tuzhilin disclose combining a tag contained in the first user profile associated with a tag contained in the second user profile; and storing the combined tag in a composite user profile(col. 4, lines 1-30, i.e. "unique index key" is a tag, col. 3, line 30-col. 4, line 5).

Re claim 29: Tuzhilin disclose averaging a value associated with the tag contained in the first user profile with a value associated with the tag contained in the second user profile(col. 4, lines 25-52).

Re claims 33 and 34: Tuzhilin does not explicitly disclose the first user profile includes one or more tags which correspond to the first user's preferences for one or more non-aesthetic characteristics of products. And preferences include at least one of desired price range, brand preference, vendor preference, or product availability.

However, in Abstract, col. 3, lines 50-60, col. 4, lines 55-67, col. 8, lines 15-col. 9, lines 1-40 thereof, Nahan et al. disclose price, brand, title, artist, size and other non-aesthetic characteristics. Thus, it would have been within the level of ordinary skill in the art to modify the method of Tuzhilin by adopting the teachings of Nahan et al. The motivation to combine these references is that the Nahan et al. reference provides a complete listing of non-aesthetic characteristics used in the art world which when combined in various categories lead to a comprehensive description of the product including price, size and availability for purchase that are attributes of the product.

12. Claims 30,31 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tuzhilin and Nahan et al. as applied to claim 28 above, and further in view of Lang et al.(U.S. PAT. 5867799A).

Re claim 30: Tuzhilin does not explicitly disclose assigning a weight factor to a value associated with a tag contained in the first user profile; assigning a weight factor to a value associated with a tag contained in the second user profile; and averaging the weighted values of the tags in the first and second users' associated with the same characteristic. However, in col. 3, lines 15-40, Lang et al. disclose that weighted average techniques for filtering user information is old and well-known. Thus, it would have been within the level of ordinary skill in the art to modify the method of Tuzhilin by adopting the teachings of Lang et al. The motivation to combine these references is the weighed average technique is mentioned in Lang et al. and it would be obvious to apply this technique to a value associated with an attribute tag or a profile tag to create a combined profile that has relevant characteristics of each individual profile.

Re claims 31 and 32: Tuzhilin disclose receiving input from the first user indicating how the first and second users' profile should be combined. And presenting the first or second user with one or more questions to determine how the first and second users' profile should be combined(Abstract, i.e. "static and dynamic profile are then combined to form the user profile" and the user profile here is clearly a composite profile, and Fig. 6b and 6c and col. 3, lines 15-25,col. 2, lines 20-60, col. 5, lines 45-65). Although Tuzhilin does not indicate his invention prompts the user for feedback and the user's opinion on profiling

Art Unit: 3628

combining, this is an inherent characteristic because Tuzhilin's invention would not work without user input.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Debra F. Charles whose telephone number is (703) 305-4718. The examiner can normally be reached on 9-5 Monday thru Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hyung Sough can be reached on (703) 308-0505. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 306-5771.

Debra F. Charles

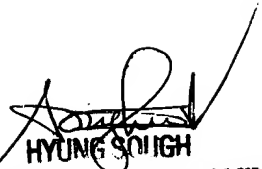
Examiner

Art Unit 3628

dfc

Application/Control Number: 09/543,868
Art Unit: 3628

Page 21



HYUNG SOUGH
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600